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Single Bench

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEALNO. 946 / 2004

Appellant (In Custody)	:	Uttam Das S/o Narayan Das Bangali, Aged about 22 Years, R/o Kalimela, P.S.Kalimela, Dist : Malkangiri (Orissa), At present Tongpal in the House Of Raju Bangali, Kumharpara, Dist : Dantewada-(C.G.)

Versus

Respondent	:	State of Chhattisgarh Through the District Magistrate Raipur, Dist : Raipur –(C.G.)

CRIMINAL APPEAL U/S 374 (2) OF THE CRIMINAL PROCEDURE CODE.

dated

(29)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 946/2004

Uttam Das

Vs.

State of Chhattisgarh.

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Post for: 29 **-08-2006**

Sd/-
Dilip Raosaheb Deshmukh
Judge

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 946/2004

Uttam Das

Vs.

State of Chhattisgarh.

Single Bench: Hon'ble Shri **Dilip Raosaheb Deshmukh, J.**

Present:
Shri Prafull Bharat, learned counsel for the appellant.
Shri Ashish Shukla, learned G.A. for the State.

J U D G M E N T
(Delivered on 29th day of August 2006)

This appeal is directed against the judgment dated 06-09-2004 delivered by Shri Sandeep Buxy, Special Judge, (N.D.P.S.) Raipur in Special Criminal Case No.63/2003 whereby the appellant was convicted under Section 20(b)(ii)(B) of the Narcotic Drugs and Psychotropic Substances Act, 1985 (hereinafter referred to as 'the Act') and was sentenced to undergo rigorous imprisonment for 7 years and a fine of Rs.25,000/-, in default of the same, to undergo additional R.I. for six months.

2. Brief facts are that Assistant Sub Inspector K. Pradhan PW-5 of Police Station-Kurud received secret information that one person was transporting ganja in a motorcycle from Dhamtari to Kurud. After recording the said information and completing necessary legal formalities as required under the Act, Assistant Sub Inspector K. Pradhan PW-5 in presence of witnesses Alim Khan PW-1 and Sushil Kumar Chandrakar PW-2 apprehended the appellant while he was going

on a motorcycle at Sandha Chowk. After giving notice to the appellant, a search was conducted. 5 K.G. of contraband ganja was found tied to the handle in a Air Bag, 2 K.G. of ganja was found inside the dicky wrapped in a newspaper and white polythene and 10 K.G. of ganja was also found wrapped in a newspaper and polythene under the seat. Three samples of 100 Grams each were prepared and sealed. Seizure memo Ex.P-5 was prepared. The accused-appellant and the seized articles were produced before the Officer-in-charge of Police Station-Kurud Ku. Bharati Sori PW-6 who entrusted the same to the custody of Head Constable Suresh Singh Bais, Malkhana Incharge PW-4. The same was entered in the Malkhana Register Ex.P-12. On 21-07-2003, three sealed sample packets of 100 grams each as also the remaining quantity of ganja in sealed packets were sent for chemical analysis to the Forensic Science Laboratory through Constable Radhe Raman Pandey vide memo Ex.P-16 of Superintendent of Police, Dhamtrari. Vide report Ex.P-17 of the Forensic Science Laboratory, it was opined that all the packets contained ganja. Prosecution was launched against the appellant. The appellant abjured the guilt, pleaded innocence and led no evidence in defence. The prosecution examined 7 witnesses. Relying upon the evidence led by the prosecution, the learned trial Judge convicted and sentenced the appellant as aforesaid in para-1. (Supra)

3. Shri Prafull Bharat, learned counsel for the appellant has assailed the conviction of the appellant on the ground of non-compliance of Section-52(3) & Section-55 of the Act. It was contended that neither the Malkhana Register Ex.P-12 nor the testimony of Head Constable Suresh Singh Bais PW-4 or Ku. Bharati Sori, Officer-in-charge of Police Station-Kurud PW-6 revealed that

the sample packets were either entrusted for safe custody at Malkhana or were also sealed with the seal of Officer-in-charge of Police Station-Kurud. A reference was made to Rojnamchasana Ex.P-14 (C) which revealed that contraband ganja alleged to have been seized was in a brick like shape whereas the ganja examined by the Forensic Science Laboratory was not so. It was also pointed out that while ganja was entrusted to Constable Radhe Raman Pandey vide memo Ex.P-16 of Superintendent of Police, Dhamtari on 21-07-2003, it reached Forensic Science Laboratory on 23-07-2003 through Constable Radheshyam. It was urged that Malkhana Register Ex.P-12 did not show that samples were taken at any time after the contraband ganja 4.900 K.G., 1.900 K.G. and 9.900 K.G. was deposited in the Malkhana in a sealed condition. It was also argued that Alim Khan PW-1 and Sushil Kumar Chandrakar PW-2 did not support the prosecution story and were declared hostile. Lastly, it was argued that the possibility of the tampering with the contraband articles and samples examined by the Forensic Science Laboratory could not be ruled out. On the other hand, Shri Ashish Shukla, learned Govt. Advocate argued in support of the impugned judgment.

5. Having considered rival submissions, I have perused the record. Alim Khan PW-1 stated that while he was having tea in a hotel at Kurud, his signatures were obtained on the documents while the appellant was not present. He specifically asserted that the police did not seize any articles from the appellant. Sushil Kumar Chandrakar PW-2, a labourer also stated that no seizure was affected in his presence but his signatures were obtained by the Police on the documents. Thus, independent witnesses who were alleged to have been called by the A.S.I. K. Pradhan PW-5 after receiving secret

information at Police Station-Kurud vide Ex.P-1 and were allegedly present at the time of search and seizure did not support the prosecution story.

6. Assistant Sub Inspector K. Pradhan PW-5 testified that after recording the secret information and calling witnesses, he proceeded to Sandha Chowk and intercepted the appellant who was coming on a motorcycle. A search was conducted and contraband ganja was recovered from the motorcycle of the appellant as stated in para-2. (Supra). He has specifically stated that he prepared a sample of 100 Grams each from each of the 3 containers in which ganja was recovered and sealed the sample packets as also the remaining ganja.

7. An offence under the Act involves deterrent punishment which may extend up to 10 years and a fine which may also extend up to Rs. 1 Lakh. The intention of legislature in enacting Section-55 of the Act is clear that it reposes confidence in the Officer-in-charge of the Police Station who is a senior police officer and who is expected to take charge of the articles seized from the accused and to allow any officer who accompanies such articles to the Police Station or who may be deputed for the purpose to affix his seal to such articles or to take samples of and from them and all samples so taken shall also be sealed with a seal of the Officer-in-charge of the Police Station. The Legislative intent behind Section-55 of the Act is to ensure that the samples so prepared are not tampered with till they reach the Forensic Science Laboratory for chemical analysis.

8. In this case, Sub Inspector Ku. Bharati Sori, PW-6, Officer-in-charge of the Police Station-Kurud did not depose in her testimony

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whether the articles were produced in a sealed condition by the Assistant Sub Inspector K. Pradhan PW-5 before her or whether samples had already been prepared and sealed by Assistant Sub Inspector K. Pradhan. She also did not state that samples were taken and sealed in her presence before she entrusted the seized articles for safe custody at the Malkhana. She also did not depose that she had affixed the seal of the Officer-in-charge of Police Station-Kurud on the articles produced before her by Assistant Sub Inspector K. Pradhan PW-5 or on the samples prepared therefrom. It is pertinent to note that the testimony of Head Constable Suresh Singh Bais PW-4 does not show that three samples of 100 grams each bearing the seal of Assistant Sub Inspector K. Pradhan PW-5 were deposited in the Malkhana on 17-7-2003. Malkhana Register Ex.P-12 also does not show that any such sample packets were deposited at the Malkhana. It merely shows that three containers carrying 4.900 K.G., 1.900 K.G. and 9.900 K.G. ganja in a sealed condition and one motorcycle were deposited. If three sample packets were thus sent to the Forensic Science Laboratory along with the aforesaid quantity of ganja for chemical analysis on 21-07-2003, it is not explained as to from which articles three samples of 100 grams each had been taken, because the quantities mentioned in Malkhana Register are shown to have been received at the Forensic Science Laboratory in toto. It thus become extremely doubtful as to who separated the samples from the articles deposited in Malkhana and when. The Malkhana Register also does not show on what date the samples were prepared and remaining articles were taken out from the Malkhana. It also does not show the name of the Constable to whom the articles were entrusted for being taken to the Forensic Science Laboratory and also the date thereof. A perusal of the memo of Superintendent of Police

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Ex.P-16 shows that the sample packets were sent through one Constable Radhe Raman Pandey whereas the report Ex.P-17 of the Forensic Science Laboratory shows that the sample packets were received from one Constable Radheshyam. Constable Radhe Raman Pandey or Radheshyam was not examined by the prosecution. Thus, the vital link evidence is also missing in this case. Seal affixed to seizure memo Ex.P-5 appears to be a personal seal of Assistant Sub Inspector K. Pradhan PW-5 bearing impression K.P. and not an official seal. Entries in the Malkhana Register Ex.P-12 also did not show that specimen impression of the seal was deposited along with the seized articles.

9. From the above discussion, the following points emerge:-

(A) Independent witnesses Alim Khan PW-1 and Sushil Kumar Chandrakar PW-2 did not support the prosecution story.

(B) The Constable who took the sample packets to the Forensic Science Laboratory was not examined by the prosecution.

(C) Malkhana Register Ex.P-12 did not show that sample packets were deposited in the Malkhana.

(D) There was total non-compliance of Section-55 of the Act in as much as Sub Inspector Ku. Bharati Sori PW-6, Officer-in-charge of Police Station-Kurud did not affix the seal of the Officer-in-charge of the Police Station-Kurud on the articles delivered to her by Assistant Sub Inspector K. Pradhan PW-5.

(E) It was extremely doubtful as to when the samples were separated from the articles deposited in the Malkhana

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for being sent to the Forensic Science Laboratory and by whom.

(F) The description of the articles given in Rojnamchasana Ex.P-14 (C) and the description contained in the report of the Forensic Science Laboratory Ex.P-17 did not match and thus did not rule out the possibility that the articles sent to the Forensic Science Laboratory could have been tampered with.

(G) Head Constable Suresh Singh Bais PW-4 did not depose that duly sealed sample packets were deposited in the Malkhana.

10. Having thus considered the evidence led by the prosecution in its entirety, I am of the considered opinion that conviction of the appellant under Section 20 (b) (ii) (B) of the Act and the sentence awarded thereunder by the learned trial Judge are liable to be set aside.

11. In the result, the appeal is allowed. Conviction of the appellant under Section 20 (b) (ii) (B) of the Act and the sentence awarded thereunder by the learned trial Judge are set aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.

Sd/-
Dilip Raosaheb Deshmukh
Judge